

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 83-148)

Decision Granting Domestic Interested Party Petition Concerning Tariff Classification of Cigarette Leaf Tobacco

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of decision granting domestic interested party petition concerning tariff classification of cigarette leaf tobacco.

SUMMARY: In response to a petition from a domestic interested party concerning the tariff classification of imported cigarette leaf tobacco, Customs invited public comments. The petition requested that cigarette leaf tobacco, which has been processed by threshing, shredding, and other acts of manipulation, be classified under the provision for stemmed cigarette leaf filler tobacco, rather than under the general provision for tobacco, manufactured or not manufactured, not specially provided for.

After further review of the matter and consideration of the comments, Customs has decided to grant the domestic interested party petition.

DATE: Customs change of classification will be effective with respect to all merchandise entered for consumption or withdrawn from warehouse for consumption more than 30 days after the date that notice to the petitioner is published in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Russell X. Arnold, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5727).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a notice published in the Federal Register on January 4, 1983 (48 FR 366), Customs advised the public that a petition had been filed pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of flue-cured tobacco, requesting that certain imported tobacco, which has been machine threshed for use in the manufacture of cigarettes, be classified for tariff purposes as stemmed cigarette leaf filler tobacco under item

170.35, Tariff Schedules of the United States (TSUS, 19 U.S.C. 1202), at a Column 1 rate of duty of 32 cents per pound. The merchandise in question is currently classified under item 170.80, TSUS, as tobacco, manufactured or not manufactured, not specially provided for at a Column 1 rate of duty of 17.5 cents per pound.

The tobacco which is the subject of this petition is machine-threshed tobacco produced by adding moisture to leaf tobacco, mechanically removing the stems, and breaking the remaining tobacco into pieces ranging from $\frac{1}{2}$ inch to 2 inches in size. The resultant product of this processing consists of strips or fragments of tobacco generally used in the manufacture of cigarettes.

In a decision published in the Federal Register on May 20, 1980 (45 FR 33761), Customs determined that this same tobacco was neither scrap tobacco, classifiable under item 170.60, TSUS, nor leaf tobacco, classifiable under item 170.35, TSUS, but that it had been processed to the extent that it was a partially manufactured product classifiable under item 170.80, TSUS.

In the present case, the petitioner contends that Customs current classification of such tobacco is incorrect, has resulted in the avoidance of appropriate tariffs, and has had a serious impact upon producers of domestic flue-cured tobacco. He asserts that the subject tobacco has not been significantly processed toward its end use in cigarette manufacture, and therefore that it is still in leaf form. The petitioner submits that, in the trade, stemmed leaf tobacco includes any leaf product, 81 to 85 percent of which is $\frac{1}{2}$ inch or better in size. He maintains that the TSUS provides for only two types of tobacco, "wrapper" and "filler," and that all tobacco which does not meet the definition of "wrapper" should be treated as "filler." The petitioner further contends that "wrapper" and "filler" are *eo nomine* terms, and since an *eo nomine* provision covers the article in all of its forms, the shredded leaf is covered by the filler tobacco provision. He maintains that the term filler tobacco is more specific than "tobacco, manufactured or not manufactured, not specially provided for," and that since item 170.80, TSUS, is only a catchall classification provision, the subject tobacco is properly classified as stemmed cigarette leaf filler tobacco under item 170.35, TSUS.

DISCUSSION OF COMMENTS

Over one hundred and fifty (150) comments were received in response to the petition.

A majority of the comments support the petition. Most of these statements in support are from farmers and farm group associations. They emphasize the severe economic hardships suffered by the domestic growers as a result of the competition resulting from the large increase in imports.

Comments in opposition to the petition were received from tobacco importers, dealers and processors. They state that the imported

merchandise is not a leaf tobacco, but is a highly processed product, which is the end result of a processing which substantially changes the nature of the original leaf. The idea was also expressed that a great increase in revenue would not result from an increase in duty on this tobacco, since the importers would switch from importing the shredded tobacco to importing whole leaf, which has a much lower rate of duty.

DETERMINATION

The subject merchandise is used for the same purpose as the stemmed leaf which is provided for by name in item 170.35, TSUS. While the tobacco at issue is smaller than the tobacco leaf that Customs has traditionally classified as stemmed tobacco leaf, the reduction in size is the result of the modern threshing process used to separate the stem from the more desirable portion of the whole leaf. If the stem separation had resulted in two half leaves, there is no doubt that the product would be known as stemmed cigarette leaf filler tobacco. The fact that technological progress is utilized and a machine is employed in the separation process should not require a change in tariff classification merely because the resultant pieces of leaf are smaller in size. The fragmented tobacco produced by the mechanical operation is no different in quality, physical characteristics, or use than the old fashioned stemmed cigarette leaf accomplished by hand separation. That there is not a material change is indicated by the fact that, under an established Customs practice, the machine threshed leaf tobacco is considered to have undergone only a manipulation, not a manufacture, when the operation is performed in a bonded manipulating warehouse. That the modern mechanical process used to remove the stem from the leaf also results in smaller pieces than half leaves should not control the classification because there has been no substantial transformation into something which is not stemmed leaf tobacco.

Customs now believes that the fact that the subject tobacco leaf is stemmed mechanically should not preclude classification under the TSUS provision for stemmed cigarette leaf filler tobacco.

There is no compelling basis for departing from this specific provision and classifying the product in a general descriptive provision for tobacco, not specially provided for. Nothing in the legislative history or in judicial decisions issued since 1939, the date when the term cigarette leaf tobacco first appeared in the tariff schedules, mandates that machine threshed tobacco has undergone such advancement that precludes the same classification as other stemmed leaf. It is well settled that if an imported article is described in more than one provision in the TSUS, it must be classified under the provision which most specifically describes it.

Accordingly, Customs concludes that the subject tobacco has not been substantially advanced from the form of a stemmed cigarette

leaf filler tobacco, and is therefore correctly classified under item 170.35, TSUS.

This decision will be effective with respect to merchandise entered or withdrawn from warehouse for consumption more than 30 days after the date of publication of this notice in the CUSTOMS BULLETIN.

AUTHORITY

This notice is being published in accordance with section 516(b), Tariff Act of 1930, as amended (19 U.S.C. 1516(b)), and section 175.22(a), Customs Regulations (19 CFR 175.22(a)).

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: June 9, 1983.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, July 12, 1983 (48 FR 31954)]

(T.D. 83-149)

Customhouse Broker's License—Cancellation Cancellation of Customhouse Broker's License No. 4747.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

Notice is hereby given that the Commissioner of Customs on July 7, 1983, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part III of the Customs Regulations, as amended (19 CFR Part III), canceled with prejudice the individual customhouse broker's license No. 4747 issued to David R. McIntyre, Houston, Texas for the Customs District of Houston, Texas. The Commissioner's decision is effective as of July 7, 1983.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, July 15, 1983 (48 FR 32425)]

(T.D. 83-150)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: July 11, 1983.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Aerolineas Nicaraguenses, S.A., dba: Aero Nica, Apartado Postal 3688, Managua, Nicaragua; American Motorists Ins. Co.	June 27, 1983	June 29, 1983	New York Seaport \$100,000
The foregoing principal has been designated as a carrier of bonded merchandise.			
Lineas Aereas Costarricenses, S.A., A/K/A: Lacsa, Apartado 1531, San Jose, Costa Rica; American Motorists Ins. Co.	June 8, 1983	June 24, 1983	New York Seaport \$100,000

BON-3-01

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 83-151)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented

by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: July 11, 1983.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
A.B.C. Express, Inc., P.O. Box 890, Lebanon, TN; motor carrier; The American Ins. Co.	June 13, 1983	June 27, 1983	New Orleans, LA \$25,000
B.I. Transportation, Inc., P.O. Box 691, Burlington, NC; motor carrier; Federal Ins. Co.	May 17, 1983	June 16, 1983	Wilmington, NC \$25,000
Quincy L. Bryd, Inc., 2027 Anchor Lane, Austin, TX; motor carrier; Washington International Ins. Co.	May 31, 1983	June 24, 1983	Dallas/Fort Worth, TX \$25,000
Cavalier Freight, Inc., 5741 Bayside Rd., Virginia Beach, VA; motor carrier; Fidelity & Deposit Co. of MD.	June 3, 1983	June 10, 1983	Norfolk, VA \$25,000
Coast Express, Inc., P.O. Box 245, Chino, CA; motor carrier; South Carolina Ins. Co.	Apr. 20, 1983	June 28, 1983	Los Angeles, CA \$50,000
Contrans, 25 James St., New Haven, CT; motor carrier; Old Republic Ins. Co. (PB 6/24/82) D 6/24/83 *	June 14, 1983	June 24, 1983	Bridgeport, CT \$25,000
Erie Express, Inc., 690 Nickel Plate Dr., Cleveland, OH; motor carrier; The Ohio Casualty Ins. Co. D 6/28/83	July 15, 1982	July 28, 1982	Cleveland OH \$50,000
Freight Management Associates, Inc., d.b.a.: Polar Express, 6719 E. Marginal Way So., P.O. Box 3537, Seattle, WA; motor carrier; Oregon Automobile Ins. Co.	May 26, 1983	June 22, 1983	Seattle, WA \$25,000
Hall's Motor Transit Co., 6060 Carlisle Pike, Mechanicsburg, PA; motor carrier; Aetna Casualty & Surety Co. (PB 6/18/79) D 6/17/83 *	May 2, 1983	June 18, 1983	Philadelphia, PA \$25,000
Harbor Cartage Inc., 312 W. End S., Detroit, MI; motor carrier; Fireman's Fund Ins. Co. (PB 6/18/81) D 6/20/83 *	June 18, 1983	June, 20 1983	Detroit, MI \$50,000
Ivory, Inc., 1356 Northwest 2nd Ave., Boca Raton, FL; motor carrier; Protective Ins. Co. D 6/23/83	Feb. 15, 1982	Apr. 6, 1982	Baltimore, MD \$50,000
K. Emde Trucking, 3835 E. 2nd Ave., Burnaby, B.C., Canada; motor carrier; Royal Globe Ins. Co. D 3/29/83	Jan. 3, 1975	Feb. 3, 1975	Seattle, WA \$25,000

Footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Louis J. Kennedy Trucking Co., 342 Schuyler Ave., P.O. Box 506, Kearny, NJ; motor carrier; Ins. Co. of North America.	May 31, 1983	June 21, 1983	Newark, NJ \$50,000
Matco Transportation, Inc., 3rd St. & Hackensack Ave., So. Kearny, NJ; motor carrier; U.S. Fire Ins. Co. (PB 6/6/68) D 6/15/83 ⁴	May 23, 1983	June 15, 1983	Newark, NJ \$50,000
Melburn Truck Lines (Toronto) Co., Ltd., P.O. Box 306, Station U, Toronto, Ontario, Canada; motor carrier; Ins. Co. of North America. D 3/12/83	July 2, 1977	Aug. 29, 1977	Buffalo, NY \$25,000
Miles Shipping Corp., Inc., 10542 E. Pine, P.O. Box 3661, Tulsa, OK; motor carrier; Old Republic Ins. Co.	Dec. 15, 1982	June 21, 1983	Dallas/Fort Worth, TX \$25,000
New World Van Lines, Inc., 5820 N. Clark St., Chicago, Ill; motor carrier; Continental Casualty Co.	May 4, 1983	June 27, 1983	Chicago, IL \$25,000
O'Neill Brothers Transfer & Storage Co., 706 S.W. Commercial St., Peoria, ILL; motor carrier; American Manufacturers Mutual Ins. Co.	Mar. 2, 1983	June 27, 1983	Chicago, IL \$25,000
Oregon Washington Transport, 3322 N.W. 35th Portland, OR; motor carrier; Reliance Ins. Co. D 6/10/83	Feb. 15, 1968	Mar. 8, 1968	Portland, OR \$25,000
Polar Express—See Freight Management Associates, Inc.			
Putnam Transfer & Storage Co., 1502 Wooklawn Ave., Zanesville, OH; motor carrier; The Buckeye Union Ins. Co. D 6/28/83	July 5, 1978	July 24, 1978	Cleveland, OH \$50,000
Riley Whittle, Inc., P.O. Box 19038, Phoenix, AZ; motor carrier; Employers Ins. of Wausau. (PB 2/24/81) D 3/24/83 ⁵	Mar. 8, 1983	Mar. 25, 1983	Nogales, AZ \$25,000
Shale Auto Transport, Inc., 3370 Old Kings Rd., Jacksonville, FL; motor carrier; Reliance Ins. Co.	June 13, 1983	June 17, 1983	Tampa, FL \$25,000
Texas-Continental Express, Inc., 2603 W. Blvd., Euless, TX; motor carrier; Ins. Co. of North America. D 6/24/83	Nov. 19, 1977	Dec. 29, 1977	Houston, TX \$25,000
Bill Thompson Transport Ltd., RR #3, 462 Talbot, Box 547, St. Thomas, Ontario, Canada; motor carrier; Old Republic Ins. Co.	June 17, 1983	June 20, 1983	Detroit, MI \$50,000
Tropical Cartage Corp., 8847 N.W. 36th St., Miami, FL; motor carrier; Investors Ins. Co. of America.	Apr. 25, 1983	June 8, 1983	Miami, FL \$25,000

Footnotes at end of table.

CUSTOMS

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
U.S. Distributors, 570-C.W. Lambert Rd., Brea, CA; motor carrier; Transport Indemnity Co. (PB 3/9/82) D 2/13/83 ⁶	Nov. 17, 1982	Feb. 14, 1983	Los Angeles, CA \$50,000

¹ Surety is Washington International Ins. Co.² Surety is Ins. Co. of North America.³ Surety is Sentry Ins. a Mutual Co.⁴ Surety is St. Paul Fire & Marine Ins. Co.⁵ Surety is Great American Ins. Co.⁶ Surety is Aetna Casualty & Surety Co.

BON-3-03

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of \$0.15 per page.

The microfiche referred to above contains rulings/decisions published or listed in the CUSTOMS BULLETIN, many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of \$0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost (\$0.15) per sheet of fiche.

It is anticipated that additions to both sets of microfiche will be made quarterly. Requests for subscriptions for the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: July 12, 1983.

B. JAMES FRITZ,
*Director, Regulations Control
and Disclosure Law Division.*

RECENT UNPUBLISHED CUSTOMS SERVICE DECISIONS

Date of decision	Control No.	Issue
6-14-83	070630	Classification: whether certain hand loomed fabric is classifiable under items 319.01 through 319.07, TSUS
3-30-83	105961	Air Commerce: Difference between air cabotage laws and vessel coastwise laws (46 U.S.C. 883)
5-27-83	106015	Vessels: when evidence shows that any part of a vessel fails while on the first round trip voyage immediately following domestic repair of that part, such failure occurring within six months of domestic repair will be considered a casualty occurrence which qualifies for remission under section 1466
6-20-83	106132	Vessels: alumina may be transported from Texas to Quebec and Canada by non coastwise qualified vessel and onward to New York by Canadian rail under the 3rd proviso to 46 U.S.C. 883 if a through rate tariff has been filed with the Interstate Commerce Commission and is in effect
6-20-83	106145	Vessels: use of foreign built vessel under bareboat charter distinguished from operation under time charter
6-28-83	106156	Vessels: The Stevens Amendment (16 U.S.C. 1856(c)) has not effected any change in the application of 46 U.S.C. 251(a) and 46 U.S.C. 883 in the internal waters of a State of the United States
6-6-83	106169	Vessels: vessels, not yachts or pleasure boats assembled in a foreign trade subzone are exempt from Customs duty
6-20-83	543065	Value: an importer who uses deductive value as the method of appraisement for his imported goods is only entitled to adjustment from sales price in the U.S. of either the commission usually paid or the addition usually made for profit and general expenses

United States Court of Appeals for the Federal Circuit

(Appeal No. 83-594)

LEATHER'S BEST, INC., APPELLEE v. UNITED STATES, APPELLANT

(Decided June 10, 1983)

Before NICHOLS, KASHIWA, and NILES, *Circuit Judges*.

NICHOLS, *Circuit Judge*.

This appeal by the government requires us to review a decision of the Court of International Trade (CIT) holding that certain protested entries of finished leather described in the testimony and illustrated in the exhibits as "embossed" or "smooth plated," were "fancy." *Leather's Best, Inc. v. United States*, — CIT —, — F. Supp. — Appeal No. 82-85 (October 8, 1982). We affirm.

Competing Tariff Provisions

Classified:

Leather, in the rough, partly finished, or finished.

Other * * *

Other * * *

Not fancy

121.57 (1976 entries) Other * * * 5% ad val. or 121.58 (1977 entries)

Claimed:

Fancy * * *

Other * * * free

"Fancy" leather would normally be dutiable at a higher rate, but if the product of certain listed "developing" countries, by General Headnote 3(c) it is entitled to free entry under the General System of Preferences (GSP). It is not denied, that if "fancy," the instant leather obtains free entry. The government in this appeal maintains a position that often would be to its disadvantage.

The word "fancy" is defined in *Subpart A*, headnotes—

1. For the purpose of this subpart * * *

(b) The term "fancy" as applied to leather means leather which has been embossed, printed, or otherwise decorated in any manner or to any extent (including leather finished in aluminum, gold, silver, or like effects and leather on which the original grain has been accentuated by any process).

* * * * *

The Merchandise Involved

The testimony agreed, and the trial court found, that the leather had been "embossed" by one or the other of two processes. Some was "hair cell embossed." Some was "smooth plated." Government witnesses opined it was not "decorated." All was "bovine" leather fully tanned before the embossing process, dehaired and defleshed before the tanning. The tanning solutions impart characteristics to the hide. In the embossing process, a plate utilizes heat and pressure to imprint the design or smooth print upon the leather. The purpose of utilizing hair cell embossing is to imprint a more uniform and permanent grain design which improves the "cutability," i.e., eliminates some of the useless scrap otherwise generated in manufacture of finished articles. It hides tick bite marks and other defects and blemishes. Smooth plating increases the glossiness and smooths the leather.

By the appellee's testimony which the trial court adopted, leather processed on an embossing machine is embossed. Also, by appellee's testimony, the smooth plating, as well as the hair cell embossing, is done on such an embossing machine though with different plates. We therefore call both types embossed, though there may be some semantic confusion as to the point. As we show later, it does not affect the result.

To our untutored eyes, the difference between the imports, and a similar tanned leather before going on the embossing machine, is not very marked. However, the experts had no difficulty confirming by inspection of the leather that it had in fact been through the machine, and it hardly could be pretended that this determination would present any difficulty to the officers of the customs whose expertise is well known. (None of the experts who actually testified were themselves customs officers.)

OPINION

Since the fact findings of the trial court have ample support in the record, the issue here is wholly and simply how to interpret the headnote. Appellant contended and contends here that the definition of "fancy" requires that the leather be "embossed" and "decorated," i.e., that something be added in the embossing process that visibly ornaments or beautifies the leather. The trial court read the words "otherwise decorated in any manner or to any extent" as meaning that the enhanced appeal of the leather resulting from embossing need be but minimal. A definition of "fancy" by the

ASTM was in evidence, but the trial court rejected it as too narrow because of the legislative history.

The history actually consists of comments by the then Tariff Commission (now ITC), in its Tariff Classification Study (1960) Schedule 1. This document was revised, and enacted by Congress as revised, to be the Tariff Schedules of the United States (TSUS), but the revisions do not affect the headnote we must construe. The Commission pointed out that the tariff provision for fancy leather then in effect was § 1530(d) of the Tariff Act of 1930, which provided for—

Leather * * * grained, printed, embossed, ornamented, or decorated * * * or by any other process (in addition to tanning) made into fancy leather.

It said it had received complaints by customs officers that the mechanical effects by which the tanned leather had subsequently been made "fancy," as known in 1930, were now (1960) achieved sometimes by "newly developed chemical reactions in the tanning process." It was extremely difficult for a customs officer to tell whether the leather he saw, if it looked "fancy" had been made so "in addition to," i.e., subsequent to, the tanning itself. The Commission initially had proposed to eliminate this difficulty by eliminating the category of "fancy" leather altogether. This generated protests against the duty reduction that would result for the "fancy" category. So the Commission decided to restore the separate and higher rate for "fancy" leather, and to provide a new headnote defining the term. That purpose was effectuated and nothing in the present definition makes it necessary to determine *when* the improvements to make the leather "fancy" have been applied, or *how*.

The controversy here does not turn on *when* the embossing was applied. There is no question it was applied after the tanning. Nor does it turn on *how*. There is no question it was by a mechanical process, not by chemistry in the tanning itself. Thus the problems the definition changes were made to cope with do not exist in this case. We have a situation as to which the 1930 definition created no difficulty, and the inference can readily be drawn that the Commission had no intent to change the prior law. The new language does not support, by its plain language, any contrary conclusion. The Commission did not intend to withdraw from the scope of the "fancy" classification any leather that previously had come within it. The trial court's conclusion that the changes were to assist customs officers is true but irrelevant. Any conclusion, based on the changes, that a leather previously "fancy" ceased to be so under TSUS, founders in view of the history showing that if the changes did anything, it was to make it easier to conclude that leather was "fancy," but even this change was respecting an issue irrelevant to the case we have at bar.

Normally, the exclusion from the "fancy" category of a kind of leather previously included, would result in a rate reduction. Nor-

mally, tariff rate reductions result from international trade agreement negotiations. The TSUS was not intended to supersede such negotiations by a unilateral determination. Its purpose was to clarify and simplify the United States tariff schedules, then the world's most complex, to aid administration by United States Customs, understanding of the duty liabilities they were to incur by importers, and appreciation by trade agreement negotiators what the real effect would be of what they negotiated. At times simplification by consolidation of previously separate items was expected to be accompanied by rate reductions. But the Tariff Commission was supposed to retreat if publication of the proposed new schedules revealed that a significant interest group was adversely affected. That is exactly what happened here. The proposed elimination of the "fancy" category did affect an interest group, so the Tariff Commission retreated to a position that involved less simplification, but also less interference with protection expectations. When the animals had thus been stirred up, it would be most surprising to find in the end result any significant tariff rate reduction. Yet that is what appellant would have us believe occurred. It would have us hold that the new definition, unlike paragraph 1530(d) of the 1930 Act, included as "fancy" only leathers that were both (a) embossed, and (b) decorated. That the prior law was contrary is too clear to be argued.

The trial court correctly cites *Lowenstein v. United States*, 24 CCPA (Customs) 1963 (1936) and *United States v. John P. Stetson Co.*, 21 CCPA (Customs) 3 (1933). The following quote from the latter case, at 7, is dispositive:

Here [in para. 1530(d)] we find an enumeration of several kinds of leather which are to be classified thereunder, and these are designated *eo nomine*: Grained leather, printed leather, embossed leather, ornamented leather, and decorated leather. If the involved leather be of *any one* of these varieties it is within the subparagraph, because the Congress has so specifically provided. [Italic supplied.]

There is much more said, but nothing to alter the result. Clearly the leather was "fancy" if it was "embossed" or if it was "decorated." Would that we judges today could occasionally be as positive in our statements as our predecessors frequently were! The trial judge, however, comes out at the end with his conclusion in the fine old manner—

Therefore it is not necessary to establish that embossed leather is also decorated.

We agree. Any speculations along the way as to whether a scintilla of "decoration" can be found in this leather may be disregarded as unnecessary to the result. If, however, it is supposed doubtful if the smooth plated leather is embossed, the government's own witness

said the process made it "brighter," which we consider to be at least a scintilla of decoration, all that is required.

AFFIRMED

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson

Bernard Newman
Nils A. Boe
Gregory W. Carman

Senior Judges

Herbert N. Maletz

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

(Slip Op. 83-63)

PPG INDUSTRIES, INC., PLAINTIFF v. UNITED STATES, DEFENDANT

Court No. 81-9-01273

Before RAO, *Judge*.

MEMORANDUM OPINION AND ORDER

(Dated June 23, 1983)

RAO, *Judge*: In this civil action, plaintiff seeks review of the Department of Commerce, International Trade Administration's (ITA's) antidumping duty determination under section 751 of the Tariff Act of 1930, as amended, with respect to clear sheet glass from Taiwan.

Plaintiff has moved for an order to correct the diminution of the record and requiring the ITA to include in the record to be reviewed by the court the following documents:

(1) All documents relating to the calculations used by the Department of the Treasury in establishing the appraisement reports ("master lists") for clear sheet glass from Taiwan which were used in turn by the Department of Commerce in its administrative review;

(2) All documents, memoranda, orders, questionnaires, evaluations and other materials generated or received by the Department of Commerce in connection with possible transshipment of clear sheet glass by the Israeli International Trading Co., Ltd., including correspondence or other materials which first raised the question of whether such transshipments had been made or were likely to be made;

(3) All other documents related to the determination of the Commerce Department that no shipments related to the determination of the Commerce Department that no shipments of the subject merchandise to the United States occurred during the period of review, and/or related to the decision of the Department to rely on valuations pertinent to the assessment of antidumping duties made by the Treasury Department in 1976;

(4) All documents related to the decision of the ITA to refuse the plaintiff's request for a disclosure conference, and

(5) A corrected copy of the index to the record.

The defendant opposes this motion on the grounds that the record compiled by the ITA contains all the data which the ITA considered in its final review pursuant to section 751, *supra*, and that it did not rely on or utilize the documents which plaintiff seeks to have added to the administrative record, and that, therefore, they are not properly part of the record.

Plaintiff further moves for an order granting it leave to reply to defendant's opposition to its motion on the basis that the defendant is in error in its assertion that it is required to include in the record only those documents which it considered in the section 751 review. The defendant has filed an opposition to this second motion.

The question basic to these motions is what constitutes the administrative record for review in an antidumping action. The legislative history of the Trade Agreements Act of 1979, 96th Congress, 1st Session, House Document No. 96-153, Part II, Statements of Administrative Action, explicitly details what the record for review shall contain:

Record for Review.—The record before the court, unless otherwise stipulated by all interested parties participating, will consist of all information presented to, or obtained by, the Authority or the ITC, during the course of the proceeding. The record will include all government memoranda pertaining to

the case and prepared by or for the Authority or ITC and presented to the person responsible for making a determination, or on which such person otherwise relied in making a determination. Further, the record will include a copy of the determination to be reviewed, all transcripts or records of conferences or hearings conducted during the course of such proceeding, and all notices published in the Federal Register.

This language is clear in stating that the record before the court, absent stipulation to the contrary, consists of all information presented to or obtained by the Authority during the course of the proceeding and includes all government memoranda presented to the person responsible for making a determination, or on which such person otherwise relied in making the determination.

Thus, any data or memoranda not presented to, obtained by, considered or relied upon by the ITA, the authority in this case, regardless of whether they should have been so utilized or considered, are not part of the record in this case. Whether the ITA erred in not utilizing the data which plaintiff enumerated in its motion (*supra*), is a substantive matter, the issue ultimately to be decided on the merits by this court.

It it, therefore

ORDERED that plaintiff's motion for leave to reply to defendant's motion is hereby granted, and it is further

ORDERED that plaintiff's motion to correct diminution of the record is hereby denied.

(Slip Op. No. 83-64)

PISTOL FASHIONS, LTD., PLAINTIFF v. UNITED STATES, DEFENDANT

Court No. 82-4-00444

Before RAO, Judge.

Classification of Women's Raincoats With Two Loops on Each Epaulet

[Judgment for plaintiff.]

(Dated June 27, 1983)

Mandel & Grunfeld (Steven P. Florsheim at the trial, Robert B. Silverman with him on the briefs) for the plaintiff.

J. Paul McGrath, Assistant Attorney General, Joseph I. Liebman, Attorney in Charge, International Trade Field Office (*Deborah E. Rand* at the trial and on the briefs) for the defendant.

RAO, Judge: This civil action concerns the proper classification of women's raincoats, style 107, imported by plaintiff from Hong Kong and entered at New York. the raincoats have two fabric loops on each shoulder through which the epaulets may be inserted before they are buttoned near the collar. The Customs Service (Cus-

toms) classified the merchandise under item 382.00, Tariff Schedules of the United States, as amended (TSUS), as women's ornamented wearing apparel of cotton with a duty rate of 35 percent ad valorem.

It is plaintiff's claim that the merchandise is properly classifiable under item 382.12, TSUS, as other women's coats of cotton with a duty rate of 8 percent ad valorem. The plaintiff disputes the Customs determination that the two loops on each shoulder through which the epaulet is passed result in the garments being ornamented since only one loop is necessary to hold the epaulet in place, the second loop being primarily unfunctional.

The question for this court is whether the merchandise is "ornamented" within the meaning of the Tariff Schedules by reason of having the double loop feature. We are guided by the opinion of our appellate court in arriving at a determination as to what constitutes ornamentation, since this term is not defined in the Tariff Schedules. In *United States v. Endicott Johnson Corp.*, 67 CCPA 47, C.A.D. 1242, 617 F.2d 278 (1980), our appellate court enunciated a two step test to determine whether a feature is to be considered ornamentation: first, does the addition impart no more than an incidental decorative effect, and second, does the feature have a functionality which is primary to any ornamental nature? An affirmative answer to either of these questions results in a nonornamental classification. The evidence and the sample introduced into evidence at the trial of the action must be examined with these two considerations in mind.

The sample of the merchandise that plaintiff introduced into evidence is a woman's cotton raincoat in a khaki color with set in sleeves, a yoke back and a removable lining. The feature in dispute, the double loops at each shoulder, is in the same fabric and color as the rest of the raincoat and the epaulet can be threaded through one or both of these loops.

Plaintiff's witnesses included Rocco Del Vecchio, the designer of the raincoat, who testified that the two loops were placed on the shoulder to give added support to the epaulet, to make the epaulet lay flatter, thereby imparting a neater appearance (R. 11), and for reinforcement of the button feature (R. 12). Plaintiff's other witness was Robert Clarke, a designer for a children's and junior-wear manufacturer not related to the plaintiff and has taught at the Traphagen School of Fashion. He testified that the two loops function to hold the epaulet flatly and securely in place (R. 30), that they hold the epaulet tighter and firmer in place (R. 31) and that, in his opinion, they do not ornament the raincoat because they are small, the same color as the coat and one of them is almost entirely hidden by the epaulet itself when it is threaded (R. 32).

The defendant's one witness, Judy Scates, owns her own free-lance design businesss and has been trained in the fashion field. She designs rainwear as well as other apparel items. It was her tes-

timony that only one loop to hold an epaulet is functional, that the second loop serves no purpose and that any stress from shoulder bags or camera bags hanging from the epaulet would be borne only by the button, and not by the loops (R. 42, 43).

Defendant also relies on the opinion in *Sportswear International Ltd. v. United States*, 4 CIT —, Slip Op. 82-118 (December 22, 1982), in which the court considered the ornamental nature of two loops attached to the front portion of the waistband of women's denim slacks. The court found, as a matter of fact, that the elasticized back of the waistband of the slacks held the garment in place on the wearer without the need of a belt. Indeed, the court relied on testimony to the effect that the loops would hold a belt in place on the front of the garment but not in the back in determining that the loops were ornamental. The evidence adduced in that case established that a functional "capability" of the loops to support a belt was neither needed nor intended.

In the instant case a functional capability was intended and is found to exist. The designer of the raincoat testified that the reason for using two loops was to make the epaulet lie flat, to give a neater appearance, and to reinforce the button feature.

Considering also the appearance of the sample raincoat, both with the epaulet threaded through both loops and threaded through one loop only, it is evident that the garment has a neater effect and lies flatter when the two loops are used and that the second loop is barely discernible when both loops are used minimizing any decorative effect. This court cannot determine, absent laboratory tests done under controlled procedures, how much support is given to the weight carrying function of the epaulet button by the double loop feature, but we will give some weight to the testimony of the witnesses who stated that in their professional opinion the second loop would reinforce the button feature, considering that there was opinion evidence to the contrary.

It is functional capability, together with the appropriateness of that function to the garment, which determines whether or not a feature is functional. *Ferriswheel v. United States*, 68 CCPA —, C.A.D. 1260, 644 F.2d 865 (1981). The two loops have the functional capability of giving the raincoat a neat appearance by holding the epaulet more firmly and flatter to the shoulder. This is evident both from the testimony presented and from the sample itself. Such a function is appropriate to the garment.

In conclusion this court finds that the double loop feature on the merchandise in issue imparts no more than an incidental decorative effect and that it does have a functionality which is primary to any ornamental effect. It is therefore the judgment of this court that plaintiff's protest has been sustained and that the merchandise is properly classifiable as other women's coats of cotton under item 382.12, TSUS.

Let judgment be entered accordingly.

(Slip Op. 83-65)

**UNITED STATES STEEL CORP., ET AL., PLAINTIFFS v. UNITED STATES
OF AMERICA, ET AL., DEFENDANTS**

Court Nos. 82-12-01707, 83-1-00152, 82-10-01361

Before WATSON, Judge.

MEMORANDUM OPINION AND ORDER

(Dated June 28, 1983)

WATSON, Judge: In this opinion, the Court rules on a motion to dismiss and untangles a snarl of related procedural matters. Court No. 82-12-01707 was initiated on December 13, 1982, to obtain judicial review of a final subsidy determination, published by the International Trade Administration of the Department of Commerce (ITA) on November 15, 1982,¹ in a countervailing duty investigation of certain steel products from Spain.

On January 3, 1983, the ITA published a countervailing duty order² in the aforementioned Spanish steel proceeding.

On January 11, 1983, plaintiffs filed an amended complaint, reciting the ITA's publication of the countervailing duty order.

On January 31, 1983, defendants moved to dismiss Court No. 82-12-01707 as premature, or, alternatively, to dismiss for lack of standing that portion of the complaint which appears to challenge a final determination in a countervailing duty investigation of certain stainless steel products from Spain.³

On March 9, 1983, plaintiffs moved for leave to file a second amended complaint which delete any reference in the complaint to the final subsidy determination arising from the investigation of Spanish stainless steel. Plaintiffs have also moved to consolidate Court No. 82-12-01707 with Court No. 82-10-01361 (a challenge to subsidy determinations and suspension agreement arising out of a countervailing duty investigation of carbon steel plate from Brazil and a challenge to subsidy determinations arising out of a countervailing duty investigation of steel from South Africa). Defendants have moved to suspend all proceedings in Court No. 82-12-01707 pending resolution of their motion to dismiss in that case.

On January 31, 1983, plaintiffs commenced Court No. 82-1-00152 to challenge a final subsidy determination, published by the ITA on January 20, 1983⁴ in a countervailing duty investigation of carbon

¹ 47 Fed. Reg. 51438-53 (1982).

² 48 Fed. Reg. 51-52 (1983).

³ 47 Fed. Reg. 51453-60 (1982).

⁴ 48 Fed. Reg. 2568-78 (1983).

steel plate from Brazil; a decision by the ITA, published on January 4, 1983,⁵ to suspend the antidumping investigation of carbon steel plate from Romania; and the same underlying ITA subsidy determinations in the Spanish steel countervailing duty investigation as were complained of in the earlier Court No. 82-12-01707.

On April 6, 1983, defendants moved to sever and redesignate the portion of Court No. 83-1-00152 which pertains to Romania. They also moved to sever the part of the action which pertains to Brazil and consolidate it with Court No. 82-10-01361. Plaintiffs have moved to consolidate Court Nos. 82-10-01361, 82-12-01707 and 83-1-00152, in their entirety.

The Court views defendants' motion to dismiss Court No. 82-12-01707 as partially justified to the extent that the action seeks to challenge ITA methodologies which allegedly undervalued subsidies. Disputes over *amounts* of subsidies found to exist are challenges to *affirmative* determinations which must await an action commenced after the issuance of a countervailing duty order.⁶ Other disputes, involving determinations that subsidies did not exist at all, represent challenges to negative determinations which may be raised in an action commenced prior to the issuance of a countervailing duty order, as in Court No. 82-12-01707.

The Court recently discussed the distinctions to be made in a case such as this:

In support of their motion to sever and dismiss the earlier action defendants note that this Court possesses jurisdiction to review what they characterize as an "affirmative final determination" in a countervailing duty proceeding only if the action is commenced within 30 days *after* the publication of a *countervailing duty order*. 19 U.S.C. § 1516a(a)(2)(A)(ii). In contrast, plaintiff views the disputed ITA subsidy determinations as "negative final determinations," eligible for review under 19 U.S.C. § 1516a(a)(2)(B)(ii) by means of an action commenced within 30 days after publication of notice of the *determination*.

The Court rejects defendants' characterization of the challenged determination as an indivisible affirmative determination which cannot be judicially reviewed in an action commenced prior to the publication of a countervailing duty order.

In *Republic Steel Corp. v. United States*, 4 CIT —, Slip Op. 82-55 (July 15, 1982), this Court held that preliminary determinations by the ITA that a particular practice is not a subsidy or that a particular producer is not receiving a subsidy are negative determinations, and therefore subject to judicial review. With one exception, the Court sees the same sort of determinations challenged in the action sought to be dismissed and consequently sees the same grounds for judicial review as in *Republic*.

⁵ 48 Fed. Reg. 317-20 (1983).

⁶ Such a dispute over quantification of a subsidy cannot be validated or initiated by means of an amended complaint in an action commenced before the issuance of a countervailing duty order. A separate action is required, which, in accordance with Rule 3(a) of this Court, must be commenced by the filing of a summons. As it happens, plaintiffs preserved the quantification dispute by properly commencing Court No. 83-1-00152.

Only that portion of the earlier action which challenges the ITA's methods of quantifying the subsid[ies] . . . was premature. The ITA's use of methodology allegedly undervaluing the amount of countervailable subsidies did not constitute a discrete "negative" determination under *Republic*, and did not present the same potential for interim injury as did the determinations that a particular practice was not a subsidy or that a particular producer was not receiving a subsidy.

United States Steel Corp. v. United States, 5 CIT —, Slip Op. 83-59 (June 16, 1983).

For these reasons, and in the interest of efficient judicial resolution of these disputes, it is hereby

ORDERED that Count I of plaintiffs' complaint in Court No. 82-12-01707 which seeks to challenge the ITA's methods of quantifying subsidies found to exist during the investigation of certain steel products from Spain is hereby severed and dismissed; and it is further

ORDERED that all matters concerning the Spanish stainless steel countervailing duty determination are hereby stricken from the complaint in Court No. 82-12-01707; and it is further

ORDERED that Counts I, II, IV (Brazil) and those parts of Counts III and V that pertain to Brazil in plaintiffs' complaint in Court No. 82-1-00152 are hereby severed and consolidated with Court No. 82-10-01361; and it is further

ORDERED that Count VI (Romania) of plaintiffs' complaint in Court No. 83-1-00152 is hereby severed and redesignated Court No. 83-1-00152S; and it is further

ORDERED that the remainder of Court No. 82-12-01707 (Spain) is hereby consolidated with the remainder of Court No. 81-1-00152 (Spain); and it is further

ORDERED that plaintiffs shall file amended complaints in Consolidated Court No. 82-12-01707, and in 83-1-00152S, and shall also file a supplemental complaint in Consolidated Court No. 82-10-01361 within 15 days of the date of entry of this Order in accordance with the above-ordered severances and consolidations; and it is further

ORDERED that defendants shall serve answers to the amended and supplemental complaints within 15 days from the service of such complaints; and it is further

ORDERED that defendants shall, within 30 days from the date of filing of the amended and supplemental complaints, file the administrative records; and it is further

ORDERED that defendants' motion to suspend Court No. 82-12-01707 is denied.



Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, June 30, 1983.

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary here given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
P83/192	Boe, J. June 23, 1983	Dynamic Ocean Services Int'l Inc.	76-1-00693	Item 609.03 8.5%	Item 642.93 0.02¢ per lb.	Doherty-Barrow of Texas, Inc. v. U.S., Slip Op. 82-47	Houston Steel cotton tie, in coils
P83/193	Boe, J. June 23, 1983	Magnavox Consumer Electronic Co.	81-3-00295	Merchandise classified as combination articles with constructively separated clock movements classified under item 120.14 (merchandise marked "A") and item 120.18 (merchandise marked "B") and assessed with duty at various rates	Item 683.24 9.9% (merchandise marked "A") Item 683.40 5.5% (merchandise marked "B") Dutiable upon basis of export value; said value equal to sum of appraised values of radio receivers, tape recorders, and timepiece portions	Texas Instruments, Inc. U.S. 1 CIT 256, aff'd 5/25/ 82	Chicago Solid state timing device; entirely with article in which incorporated (merchandise marked "A" and "B")
P83/194	Landis, J. June 27, 1983	F. W. Myers & Co.	75-12-02254	Item 608.05 0.3¢ per lb.	Item 608.02 Free of duty	F. W. Myers & Co. v. U.S. (C.D.'s 4635 and 4872)	Champlain-Rouses Point (Ogdensburg) Sponge iron powders
P83/195	Landis, J. June 29, 1983	SPD Precision, Inc.	82-1-00050	Not stated	Item 688.36 5.3% and 5.1%	Judgment on the pleadings Executive Order 12371	New York Solid state electronic digital timepieces
P83/196	Landis, J. June 29, 1983	Pulsar Time, Inc.	82-2-00163	Not stated	Item 688.36 5.3% and 5.1%	Judgment on the pleadings Executive Order 12371	New York Solid state electronic digital timepieces
P83/197	Landis, J. June 29, 1983	Pulsar Time, Inc.	82-2-00198	Not stated	Item 688.36 5.3% and 5.1%	Judgment on the pleadings Executive Order 12371	New York Solid state electronic digital timepieces
P83/198	Landis, J. June 29, 1983	Pulsar Time, Inc.	82-4-00440	Not stated	Item 688.36 5.3% and 5.1%	Judgment on the pleadings Executive Order 12371	New York Solid state electronic digital timepieces

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P83/199	Landis, J. June 29, 1983	Pulsar Time, Inc.	82-10-01439	Not stated	Item 688.36 5.3% and 5.1%	New York Solid state electronic digital timepieces
P83/200	Watson, J. June 28, 1983	Horne & Ross Sales, Inc. d/b/a Horne Sales, Inc.	71-9-01129, etc.	Item 389.60 or 706.24 25¢ per lb. + 24%, 21%, 18%, or 15%	Item 735.20 16%, 4%, 12% or 10%	Standard Surplus Sales, Inc. v. U.S. 1 CIT 119 (1981) and U.S. v. Standard Surplus Sales, Inc. No. 81-13
P83/201	Reo, J. July 5, 1983	Semiperit of America, Inc.	79-6-01023, etc.	Item 359.50 25¢ per lb. + 30¢ Item 359.10 15%	Item 359.60 8.55%	Agreed statement of facts Baltimore Cloth inserted rubber sheeting
P83/202	Landis, J. July 5, 1983	Coleco Industries, Inc.	80-9-01518	Item 735.20 10%	Item 734.20 5.5%	APP Electronics Inc. v. U.S. (C.D. 4784)
P83/203	Landis, J. July 5, 1983	Lloyd's Electronics Int'l	80-10-01582	Item 678.50 5%	Item 678.50 5%	Agreed statement of facts New York Solid-state digital AM/FM timekeeping radio/8-track player combinations with LED displays
P83/204	Boe, J. July 5, 1983	North American Foreign Trading Corp.	81-2-00136	Item 716.14 75¢ each	Item 688.36 5.5%	U.S. v. Texas Instruments, Inc. No. 81-23 3/25/82
P83/205	Boe, J. July 5, 1983	North American Foreign Trading Corp.	81-11-01572	Item 676.20 4.8% Item 715.15 Duty on "movements" under item 716.18 at rate of 67¢ each Item 715.05 Duty on "movements" under 716.18 at 67¢ each	Item 676.20 4.8% (merchandise marked "A") Item 688.36 5.3% (merchandise marked "B")	U.S. v. Texas Instruments, Inc. No. 81-23 3/25/82
P83/206	Boe, J. July 5, 1983	North American Foreign Trading Corp.	82-4-00032	Item 716.14 75¢ each	Item 688.36 5.3%	U.S. v. Texas Instruments, Inc. No. 81-23 3/25/82
						New York LCD watch modules 823T and 823

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate			
P83/207	Boe, J. July 5, 1983	RCA Corp.	81-8-01115	Merchandise classified articles with constructively separated clock movements classified under item 720.18 at \$1.125 each plus 16%, VCR classified under item 685.40 at 5.5%	Item 685.40 5.5%	Texas Instruments, Inc., v. U.S. 1 CIT 236, aff'd, 8/25/82		Los Angeles Video cassette recorders which contain digital clock/timers; entirely with article in which incorporated

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R63/492	Re, C. J. June 23, 1983	Marubeni America Corp.	73-7-02042, etc.	Export value (merchandise marked "A") United States value (merchandise marked "B")	Unit values found by appraising customs official, less ocean freight and marine insurance without additions for currency fluctuations (merchandise marked "A") Equal to appraised values, less any additions for currency fluctuation, less 11% or involved unit values, less all nondutiable charges, whichever value is higher (merchandise marked "B")	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
RS3/493	Landis, J. June 23, 1983	Gunze New York Inc.	82-2-00161	United States value	Values determined in accordance with guidelines as set forth in CIE 30/81 of 7/20/81	Agreed statement of facts	New York Synthetic textile piece goods
RS3/494	Watson, J. June 24, 1983	Shalom & Co.	R85/9316, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values thereof	Agreed statement of facts	New York Transistor radios, accessories and parts; entirely
RS3/495	Watson, J. June 24, 1983	Starlight Trading, Inc.	R82/4254, etc.	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	New York Cotton blouses, etc.
RS3/496	Watson, J. June 27, 1983	H.H. Arts	R85/19671, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values thereof	Agreed statement of facts	New Bedford (Boston) Earthen figurines
RS3/497	Watson, J. June 27, 1983	Louis Goldey Co.	R84/24192, etc.	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Mobile at New York Tires, etc.
RS3/498	Watson, J. June 27, 1983	Joseph Markovits	R89/13453, etc.	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	New York Artificial flowers
RS3/499	Watson, J. June 27, 1983	National Silver Co.	R81/3883, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values thereof	Agreed statement of facts	New Bedford (Boston) Earthenware, etc.
RS3/500	Landis, J. July 5, 1983	Topp Electronics, Inc.	79-5-00874	Constructed value	Values specified on entry papers by liquidating officer excluding one-half of amount added for assistance as set forth in Schedule of Protests attached to decision and judgment	Agreed statement of facts	Miami Not stated

R83/501	Watson, J. July 5, 1983	Hayim & Co.	R60/14817, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and appraised values	Agreed statement of facts	Portland, Oreg. Rugs
R83/502	Watson, J. July 5, 1983	Louis Goldley Co., Inc.	R67/8453	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and appraised values	Agreed statement of facts	Norfolk Mosaic tiles

Appeal to U.S. Court of Appeals for the Federal Circuit

APPEAL No. 83-1078—Goldsmith & Eggleton, Inc. v. United States—CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY ASSESSMENTS—ITC ANTIDUMPING DETERMINATION—Appeal from Slip Op. 83-23, filed May 27, 1983.

Decisions of U.S. Court of Appeals for the Federal Circuit

APPEAL No. 83-605—Swift Instruments Inc. v. United States—CLASSIFICATION (MICROSCOPES)—Appeal from Slip Op. 82-68, filed on December 9, 1982, affirmed May 27, 1983.

APPEAL No. 83-641—Shaw Industries, Inc. v. United States—TEXTILE MACHINERY—FINISHING AND PREPARING MACHINES—Appeal from Slip Op. 82-95, filed December 27, 1982, affirmed May 27, 1983.

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